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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 v.

14 PATH AMERICA, LLC, et al.,

15 Defendants.

CASE NO. C15-1350JLR

ORDER DENYING MOTION
FOR RETURN OF INVESTMENT

16 **I. INTRODUCTION**

17 Before the court is the motion of Intervenor-Plaintiff Yu Zhen Ye for clarification
18 regarding the court's October 14, 2015, order (10/14/15 Order (Dkt. # 75)) modifying the
19 preliminary injunction (PI (Dkt. # 68)) and for an order directing Receiver Michael A.
20 Grassmuck ("the Receiver") to return \$400,000.00 of Ms. Ye's investment to her. (Mot.
21 (Dkt. # 184) at 1.) Both the Receiver and Plaintiff Securities and Exchange Commission
22 ("the SEC") oppose Ms. Ye's motion. (See Receiver Resp. (Dkt. # 206); SEC Resp.

(Dkt. # 210).) The court has reviewed the motion, all the parties' submissions related to the motion, the balance of the record, and the applicable law. Being fully advised,¹ the court CLARIFIES its prior order and DENIES Ms. Ye's motion for an order directing the Receiver to return Ms. Ye's \$400,000.00 investment.

II. BACKGROUND

On October 14, 2015, the court granted leave to intervene on a limited basis to a group of eleven (11) investors in the Path America Potala Tower Project. (Interv. Ord. (Dkt. # 74).) On the same day, the court also granted the eleven investors' motion to modify the preliminary injunction to permit the release of their investment funds from the Path America escrow account at Central Escrow and the return of those funds to the same eleven investors.² (10/14/15 Order.) Since that time, the funds of ten of the eleven intervening investors have been released from Central Escrow and returned. (*See* Mot. at 1.) However, unbeknownst to counsel for the eleven intervening investors, Central Escrow had prematurely released \$400,000.00 of one of the eleven intervening investors, Ms. Ye. (*See id.*) Only after the court granted the eleven investors' motions did counsel for those investors learn that only approximately \$100,000.00 of Ms. Ye's investment remained in Central Escrow. (Sheridan Decl. (Dkt. # 185) ¶¶ 3-4.)

¹ No party requested oral argument, and the court deems it to be unnecessary here. *See* Local Rules W.D. Wash. LCR 7(b)(4).

² The SEC consented to the limited intervention of these investors and to the return of these investors' funds from Central Escrow. (10/13/15 SEC Resp. (Dkt. # 72).)

1 Ms. Ye asserts that Central Escrow's release of \$400,000.00 of her investment
2 funds to Path America was error. (*See id.* ¶ 6, Ex. A; Mot. at 3.) Ms. Ye claims that
3 because her I-526 petition had not yet been approved by the United States Citizenship
4 and Immigration Services ("USCIS"), Central Escrow should not have released her
5 funds. (*See* Sheridan Decl. ¶ 6, Ex. A.) According to Ms. Ye, on February 17, 2015,
6 Path America Operations Manager Yujing Sun sent an email to Central Escrow stating
7 that USCIS had received Ms. Ye's I-526 petition. (*Id.* ¶¶ 7-8, Ex. B.) The email,
8 however, did not state that USCIS had granted Ms. Ye's petition. (*Id.*) Nevertheless,
9 Ms. Sun's email requested that Central Escrow release 80% of Ms. Ye's investment
10 funds. (*Id.* Ex. B.) On February 18, 2015, Central Escrow wired \$400,000.00 of Ms.
11 Ye's investment to Path America Tower, LP. (*Id.* Ex. D.) Ms. Ye asserts that the
12 transfer of her funds out of Escrow and into Path America's account was "*not*
13 legitimate[,]," but instead represented a conversion of those funds to Path America's use
14 "as a result of Ms. Sun's wrongful request and Central Escrow's negligent release of [Ms.
15 Ye's] funds." (Mot. at 7 (*italics in original*).)

16 After Ms. Ye's counsel learned that Central Escrow had released \$400,000.00 of
17 Ms. Ye's investment to Path America Tower, LP, Ms. Ye's counsel asked counsel for the
18 SEC, the Receiver, and Defendants to stipulate to the refund of Ms. Ye's funds from Path
19 America's account. (*Id.* ¶ 10, Ex. E.) The parties were unable to reach agreement, and
20 this motion followed.

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III. ANALYSIS

Ms. Ye seeks an additional modification to the preliminary injunction (or “clarification” of the court’s prior order modifying the preliminary injunction) to permit the return of Ms. Ye’s investment—not from the Central Escrow account, as she originally requested (*see* 10/14/15 Order at 2), but from Path America’s account (*see* Mot. at 5). The court has inherent authority to modify a preliminary injunction in consideration of new facts. *A&M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir. 2002) (citing *Sys. Fed’n No. 91 v. Wright*, 364 U.S. 642, 647-48 (1961) (holding that a district court has “wide discretion” to modify an injunction based on changed circumstances or new facts)).

The Receiver opposes the motion, arguing that although the transfer of Ms. Ye’s funds may have been “inconsistent with . . . representations to Ms. Ye, . . . she nevertheless finds herself in a very similar circumstance as those investors . . . whose funds were previously released [to Path America], regardless of the reason.” (Receiver Resp. at 2.) Further, the Receiver notes that unlike some investors, Ms. Ye may have an alternative remedy against Central Escrow for its alleged negligence in releasing her funds. (*Id.* at 3.)

The SEC also opposes Ms. Ye’s motion. (*See generally* SEC Resp.) Like the Receiver, the SEC argues that Ms. Ye “is in the same unfortunate position as numerous other Path America investors.” (*Id.* at 1.) Indeed, the SEC points out that the court has already denied a motion to modify the preliminary injunction to require the Receiver to pay another Path America investor whose funds had been released out of escrow. (*Id.* at

1 1, 2 (citing 1/14/16 Order (Dkt. # 169)).) On the other hand, the court has granted other
2 investors' requests for the return of complete investments that remained segregated in
3 escrow, and the court has entered a stipulated order that permits all investors whose entire
4 \$500,000.00 investment currently sits in escrow to obtain the return of their investments.
5 (*See* 11/10/15 Order (Dkt. # 128), 11/16/15 Order (Dkt. # 147).) Thus, the SEC argues
6 that the court has effectively drawn "a bright line" between investors whose entire
7 investment was never commingled with that of other investors, and investors whose
8 investments were commingled in whole or in large part with other investor funds that
9 Defendant Losbang Dargey and the various Path America entities used. (SEC Resp. at
10 2.) The SEC argues that this distinction makes sense because each investor whose funds
11 were commingled in the Path America enterprises was subjected to the alleged fraud at
12 issue here. (*Id.*)

13 The court agrees with the Receiver and the SEC. By her motion, Ms. Ye seeks to
14 jump ahead of all other investors and creditors with respect to any future distribution by
15 the Receivership estate. To the extent that the Receiver may eventually be able to make
16 such a distribution to allegedly harmed investors and creditors, that time has not yet
17 come. Equity does not permit Ms. Ye to receive preferential treatment at the expense of
18 the Receivership estate. The facts upon which Ms. Ye previously moved to intervene in
19 this proceeding and to obtain a refund of her investment from Central Escrow have
20 proved to be incorrect. She now seeks a return of her investment not from Central
21 Escrow but from the Receivership estate itself. The court declines to treat Ms. Ye
22 preferentially to other similarly situated investors whose funds were also transferred from

1 Central Escrow to the Path America account and who have also allegedly been victimized
2 by the fraud asserted in this action. The court agrees with the SEC that “there is no just
3 or equitable reason to treat [Ms. Ye] differently than the other similarly-situated
4 investors, even if she is accurate that her funds should not have been released by Central
5 Escrow.” (*See id.* at 1.) Although Ms. Ye may have been entitled to a modification of
6 the preliminary injunction to permit the release of her investment funds if those funds had
7 remained in the Central Escrow account (*see* 10/14/15 Order), she is not entitled to such a
8 modification to permit the release of her funds from the Path America account.
9 Accordingly, the court CLARIFIES its October 14, 2015, order by stating that Ms. Ye is
10 not entitled to a modification of the preliminary injunction that would permit the release
11 of her funds from the Path America account and DENIES Ms. Ye’s motion for an order
12 directing the Receiver to return \$400,000.00 of her investment from the Path America
13 account.

14 IV. CONCLUSION

15 Based on the foregoing analysis, the court CLARIFIES its previous October 14,
16 2015, order modifying the preliminary injunction as stated above and DENIES Ms. Ye’s

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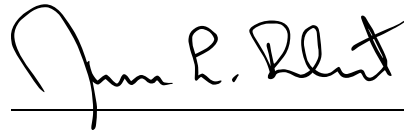
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1 motion for an order directing the Receiver to return \$400,000.00 of her investment to her
2 (Dkt. # 184).

3 Dated this 6th day of April, 2016.

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7 JAMES L. ROBART
8 United States District Judge
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